

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JESSE WILLIAM MCGRAW,

Defendant.

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CRIMINAL ACTION NO.

3:09-CR-210-B(01)

ECF

MOTION FOR CONTINUANCE

TO THE HONORABLE JUDGE JANE J. BOYLE:

Defendant Jesse William McGraw (Mr. McGraw) respectfully moves this Court for a continuance of the trial and associated dates in this case and in support presents the following:

1. On July 22, 2009, a federal grand jury named Mr. McGraw as the sole defendant in a two count Indictment alleging violation of 18 U.S.C. §1030(a)(5)(A) and § 1030(c)(4)(B)(i)(II) (Transmitting a Malicious Code).

2. This Court has granted one prior continuance in this case. In accordance with this Court's corresponding Order, Mr. McGraw is scheduled for trial on December 14, 2009 and pretrial materials are due December 4, 2009.

3. The government recently secured additional evidence in this case. Shortly thereafter, on November 25, 2009, the defense received additional discovery from the government. This additional discovery includes (but is not limited to) of a "mirror image" of a hard-drive of a computer that Mr. McGraw allegedly stole, used, and then returned to his employer.¹

¹The additional discovery also includes hours of video recordings and audio recordings.

Government counsel has advised the defense that, in the opinion of the government, this evidence is part of the charged offense(s).

4. The defense is unable to account for this new discovery in the amount of time remaining before pretrial materials are due. To account for the new discovery, the defense needs to run a forensic review of the mirror image, determine if any of the materials are either exculpatory or inculpatory, determine if any of the materials need to be the subject of a motion to exclude under the rules of evidence, decide if the materials change the type and/or number of expert and/or lay witnesses that the defense intends to call at trial, consider the evidence when finalizing trial strategy, etc. Ten calendar days is simply not enough time to accomplish these tasks, especially when considering that November 26th and 27th were federal holidays and both the U.S. Attorney's Office and the Federal Public Defender's Office were closed.

5. Should the Court grant the requested continuance, the defense agrees that any period of delay resulting therefrom, made necessary by this request for continuance, shall be excludable under 18 U.S.C. § 3161(h)(8). Additionally, the ends of justice served by the granting of this continuance outweigh the best interests of the public and the Defendant in a speedy trial, 18 U.S.C. § 3161(h)(8)(A) .

6. Defense counsel discussed this motion with the Assistant United States Attorney assigned the case, Ms. Candy Heath, and learned that the government is not opposed to a continuance.

7. To avoid conflicts with other trials, the defense respectfully requests that this Court reset trial in this matter to February 16, 2009. Ms. Heath previously advised undersigned counsel that she believes that the government's case in this matter will last four or five days. In the event

that the defense presents a case, the defense estimates that it will last one or two days.

Respectfully submitted,

/s/ John M. Nicholson
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CERTIFICATE OF CONFERENCE

I, John M. Nicholson, hereby certify that I spoke with the Assistant United States Attorney that is assigned to this case, Ms. Candy Heath, and learned that the government is not opposed to this motion.

/s/ John M. Nicholson
John M. Nicholson

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2009 I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this notice as service of this document by electronic means: Assistant U. S. Attorney Candy Heath at candina.heath@usdoj.gov. A copy of the foregoing document was also served by hand-delivery to Ms. Heath at 1100 Commerce St., Third Floor, Dallas, Texas.

/s/ John M. Nicholson

John M. Nicholson